

§ 234.301

49 CFR Ch. II (10–1–13 Edition)

safety-critical data to a signal or train control system shall be included in the software management control plan requirements as specified in § 236.18 of this chapter.

[70 FR 72384, Dec. 5, 2005, as amended at 75 FR 2698, Jan. 15, 2010]

Subpart E—Emergency Notification Systems for Telephonic Reporting of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

SOURCE: 77 FR 35191, June 12, 2012, unless otherwise noted.

§ 234.301 Definitions.

As used in this subpart—

Answering machine means either a device or a voicemail system that allows a telephone caller to leave a recorded message to report an unsafe condition at a highway-rail or pathway grade crossing, as described in § 234.303(c) and (d), and the railroad is able to retrieve the recorded message either remotely or on-site.

Automated answering system means a type of answering system that directs a telephone caller to a single menu of options, where the caller has the choice to select one of the available options to report an unsafe condition at a highway-rail or pathway grade crossing, as described in § 234.303(c) and (d), and immediately after selecting one of the available menu options, the caller is transferred to a live telephone operator.

Class II and *Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1), as those regulations may be revised and applied by order of the Board (including modifications in class threshold based on revenue deflator adjustments).

Dispatches a train or *dispatches trains* means dispatches or otherwise provides the authority for the movement of the train or trains through a highway-rail or pathway grade crossing.

Dispatching railroad means a railroad that dispatches or otherwise provides the authority for the movement of one or more trains through a highway-rail or pathway grade crossing.

Emergency Notification System means a system in place by which a railroad receives, processes, and responds to telephonic reports of an unsafe condition at a highway-rail or pathway grade crossing. An Emergency Notification System includes the following components:

(1) The signs, placed and maintained at the grade crossings that display the information necessary for the public to report an unsafe condition at the grade crossing to the dispatching railroad by telephone;

(2) The method that the railroad uses to receive and process a telephone call reporting the unsafe condition;

(3) The remedial actions that a railroad takes to address the report of the unsafe condition; and

(4) The recordkeeping conducted by a railroad in response to the report of the unsafe condition at the grade crossing.

ENS means Emergency Notification System as defined in this section.

Farm grade crossing means a type of highway-rail grade crossing where a private roadway used for the movement of farm motor vehicles, farm machinery, or livestock in connection with agricultural pursuits, forestry, or other land-productive purposes crosses one or more railroad tracks at grade.

Highway-rail and pathway grade crossing means a highway-rail grade crossing and a pathway grade crossing.

Highway-rail or pathway grade crossing means either a highway-rail grade crossing or a pathway grade crossing.

Maintaining railroad means the entity (e.g., track owner or lessee) that is responsible for maintenance of the highway-rail or pathway grade crossing warning device, or for maintenance of other aspects of the highway-rail or pathway grade crossing. If the maintenance responsibility is handled by a contractor, such as maintaining a grade crossing warning system or track structure at the highway-rail or pathway grade crossing, then the contractor is considered the “maintaining railroad” for the purposes of this subpart.

Pathway grade crossing means a pathway that crosses one or more railroad tracks at grade and that is—

(1) Explicitly authorized by a public authority or a railroad;

(2) Dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others; and

(3) Not associated with a public highway, road, or street, or a private roadway.

Public report of warning system malfunction or public report of warning system malfunction at a highway-rail grade crossing means a report that contains specific information regarding a warning system malfunction at a highway-rail grade crossing that is supplied to a railroad via the ENS by a member of the public who does not belong to one of the categories of individuals listed in the definition of *Credible report of warning system malfunction* or *credible report of warning system malfunction at a highway-rail grade crossing* in § 234.5.

Third-party telephone service means a service that receives telephonic reports of unsafe conditions at highway-rail and pathway grade crossings on behalf of a railroad. A third-party telephone service that receives reports on behalf of a dispatching railroad is the only entity between the receipt of the report from the telephone caller and the transmission of the report to the dispatching railroad. A third-party telephone service that receives reports on behalf of a maintaining railroad is the only entity between the receipt of the report from a dispatching railroad and the transmission of the report to the maintaining railroad.

Warning system failure at a pathway grade crossing means failure of an active pathway grade crossing warning system to perform as intended.

§ 234.303 Emergency notification systems for telephonic reporting of unsafe conditions at highway-rail and pathway grade crossings.

(a) *Duty of dispatching railroad in general.* Each railroad shall establish and maintain a toll-free telephone service by which the railroad can directly and promptly receive telephone calls from the public reporting specific information about any of the conditions listed in paragraph (c) of this section with respect to a highway-rail grade crossing and paragraph (d) of this section with respect to a pathway grade crossing

through which the railroad dispatches a train, except as provided in paragraphs (b) and (e) of this section, and in § 234.306(a). The dispatching railroad shall either have a live person answer calls directly and promptly, or use an automated answering system or a third-party telephone service for the purpose of receiving reports pursuant to this section, except as provided in paragraph (b) of this section.

(b) *Exceptions for certain railroads.* If a dispatching railroad operates in accordance with either of the conditions set forth in this paragraph, the railroad is not subject to the general duties stated in the last sentence of paragraph (a) of this section.

(1) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing, each of which is authorized to travel through the crossing at speeds not greater than 20 miles per hour (mph), the railroad may use an answering machine to receive calls regarding unsafe conditions at such a crossing. If using an answering machine pursuant to this paragraph, the railroad must retrieve its messages immediately prior to the start of its operations each day.

(2) If a railroad dispatches one or more trains through a highway-rail or pathway grade crossing on a seasonal or intermittent basis (*e.g.*, tourist, bi-weekly service, or non-24-hour service), and any of the trains is authorized to travel through the crossing at speeds greater than 20 mph, the railroad may use an answering machine to receive calls regarding unsafe conditions at such a crossing, but only during hours of non-operation. If using an answering machine pursuant to this paragraph (b), during periods of non-operation, the railroad must retrieve its messages daily. However, the railroad must retrieve its messages immediately prior to the start of its operations for the day, and during hours of operation the dispatching railroad shall either have a live person answer calls directly and promptly, use an automated answering system, or employ a third-party telephone service, in accordance with paragraph (a) of this section, to receive reports regarding unsafe conditions at crossings through which it dispatches trains.